Supreme Court, U.S.
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No. 09-____

IN THE

Supreme Court of the United States

MARINE EXPRESS, INC.,
Petitioner,

v.

JERROD KARMIN,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of California

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This case involves the conflicting interests of 1) maritime employers engaged in interstate and international commerce who pay their seamen employees according to federal law, and 2) their seaman employees who want to be paid under state law. Seamen are expressly exempt from overtime pay under federal law. 29 U.S.C. § 213(b)(6).

The question presented is whether the California Court of Appeal's decision, which follows California Supreme Court and Ninth Circuit case law and mandates the payment of overtime wages to seamen working in international and interstate commerce in California waters, impermissibly violates federal statutory law which expressly exempts seamen from overtime. The basis for the California Court of Appeal's decision (and the Ninth Circuit and California Supreme Court decisions it followed) is a broad interpretation of the savings clause in a federal statute and directly conflicts with this Court's holding in *United States v. Locke*, 529 U.S. 89 (2000) and the holdings of other federal courts that savings clauses in federal statutes should be narrowly interpreted in a maritime context.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Petitioner is not owned by a parent corporation and is not publically traded.

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IN THE

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MARINE EXPRESS, INC.,
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PETITION FOR A WRIT OF CERTIORARI

This Court should grant certiorari to address and resolve the important and far-reaching issue of whether federal law or state law governs the wages owed seamen, and particularly those engaged in interstate commerce as respondent Karmin was.

JURISDICTION

Petitioner Marine Express, Inc. ("Marine Express") seeks writ review of the December 2, 2009 denial by the California Supreme Court of its petition for review of the August 27, 2009 opinion of the California Court of Appeal, First Appellate District, Division 5. This Court has jurisdiction to review that decision on a writ of certiorari pursuant to 28 U.S.C. § 1257 and Rule 10(c) because the validity of Cali-

fornia's overtime wage law as applied to seamen is drawn into question due to its repugnancy to the laws of the United States.

STATUTORY PROVISION INVOLVED

Federal law, namely, the Fair Labor Standards Act ["FLSA" or "the Act"], 29 U.S.C. § 201 *et seq.* addresses wages and overtime pay for various types of workers. It specifies the types of workers who are exempt from overtime pay:

> Section 207 of this title [pertaining to overtime pay] shall not apply with respect to:
>
> (6) any employee employed as a seaman.

29 U.S.C. § 213(b)(6)

The Act contains a savings clause providing that:

> no provision of this chapter or of any order thereunder shall excuse noncompliance with any . . . State law. . . establishing a minimum wage higher than the minimum wage established under this chapter or a maximum workweek lower than the maximum workweek established under this chapter.

29 U.S.C. § 218(a).

In holding state law governs the wages of seamen, the California Court of Appeal followed the California Supreme Court's decision in *Tidewater Marine Western, Inc. v. Bradshaw*, 14 Cal. 4th 557 (1996). Like the California Supreme Court, it construed the FLSA's savings clause broadly to permit California law to override the Act and it ordered the payment of overtime to seamen despite the federal statutory exemption from overtime for seamen. Further, it penalized Marine Express for complying with federal

law. The Court of Appeal also failed to follow this Court's decision in *Locke*, in which this Court held that savings clauses in statutes affecting maritime commerce must be narrowly construed to promote the required uniformity of maritime law.

FACTUAL AND PROCEDURAL BACKGROUND

1. KARMIN'S WORK IN INTERSTATE AND INTERNATIONAL COMMERCE.

Karmin, a federally-licensed seaman, worked for Marine Express as a captain of its federally-documented vessels. At trial, Karmin stipulated he worked primarily in interstate and international commerce while operating Marine Express' vessels in California waters and the navigable waters of the United States, *i.e.* San Francisco Bay. He transported goods and persons originating outside of California on the last leg of their journey to anchored oceangoing vessels. He also provided a platform for federal Homeland Security operations. (*See* Appendix A, page 2a.)

2. THE CALIFORNIA LABOR COMMISSION PROCEEDINGS.

Karmin's action began in the California Department of Labor where Karmin sought recovery under Cal. Labor Code § 98 for overtime pay for work he performed in interstate and international commerce. After a hearing, the California Labor Commissioner entered an award in his favor for overtime wages under Cal. Labor Code § 203, as well as interest and a waiting time penalty, based on factual findings that Marine Express intentionally withheld Karmin's overtime pay when complying with the FLSA.

3. THE APPEAL OF THE LABOR COMMISSIONER'S AWARD AND THE TRIAL *DE NOVO*.

Marine Express filed a notice of appeal in the Superior Court of Alameda County, which entitled it to a trial *de novo*. Cal. Lab. Code § 98.2. The trial court entered judgment in favor of Marine Express. It held federal law governed because Karmin is a seaman engaged in international and interstate commerce, and under federal law he is expressly exempt from overtime pay. (*See* Appendix A, page 2a.)

4. KARMIN'S APPEAL TO THE COURT OF APPEAL AND MARINE EXPRESS'S PETITION TO THE CALIFORNIA SUPREME COURT.

The California Court of Appeal reversed the trial court's judgment. (*See* Appendix B, page 4a.) It held state law, not federal law, governs the wages of seamen, like Karmin, engaged in international and interstate commerce in California. Marine Express' petition for review by the California Supreme Court was denied. (*See* Appendix C, page 19a.)

REASONS FOR GRANTING THE PETITION

1. SECTION 213(B)(6) OF THE FLSA EXPRESSLY EXEMPTS SEAMEN FROM OVERTIME PAY.

The Act addresses the right of workers to overtime pay. 29 U.S.C. § 207. However, it expressly and unconditionally exempts seamen from overtime wages. 29 U.S.C. § 213(b)(6). The exemption from overtime for seamen was enacted by Congress at the request of the seamen themselves because of a

concern the regulation of a seamen's employment under the FLSA would conflict with other federal laws protecting seamen. *Tidewater*, 14 Cal. 4th at 568.

The Ninth Circuit and California courts have simply ignored Congressional dictates and the express language of the Act in holding that state law, rather than federal law, governs the wages of seamen engaged in interstate and international commerce.

The conflict between California decisions applying California state wage laws to seamen engaged in interstate commerce, and federal cases applying federal wage laws to such seamen has wide-ranging implications. Employers of seamen who comply fully with federal law applicable to maritime commerce should not suffer imposition of significant penalties under state law as Marine Express did.

Review should be granted to resolve this conflict and establish the supremacy of federal law governing the wages of seamen engaged in international and interstate commerce regardless of the waters in which they are performing their work.

2. THE COURT OF APPEAL'S DECISION AWARDING KARMIN OVERTIME PERPETUATES THE ERRONEOUS INTERPRETATION OF A FEDERAL STATUTE AND THE CALIFORNIA COURTS' RATIONALE FOR DOING SO DIRECTLY CONFLICTS WITH THIS COURT'S DECISION IN *UNITED STATES V. LOCKE*.

A. The California Supreme Court and Ninth Circuit have erroneously crafted an "exception" to the seamen's exemption from overtime pay, in violation of the express terms of the FLSA.

Despite the express language of the seamen's exemption from overtime in the Act, the Ninth Circuit, the California Supreme Court and the California Court of Appeal have created a judicial exception to the seamen's exemption from overtime pay under the FLSA. They have disregarded federal law under the guise of a broadly construed savings clause and held California overtime law governs the wages of seamen working in California, whether on matters of local interest or in interstate commerce.

The Ninth Circuit was the first to hold the unequivocal exemption from overtime for seaman under the Act should not apply in every circumstance. In *Pacific Merchant Shipping Ass'n v. Aubry*, 918 F.2d 1409 (9th Cir. 1990), seamen worked on a vessel that remained anchored near offshore drilling rigs to contain and clean up oil spills in California waters associated with those rigs. The Ninth Circuit recognized the state's significant interest in the environmental protection of its own waters and in the absence of international or interstate commerce, which it characterized as the most important factor,

concluded California's overtime law would apply to the seamen:

> *Most important*, because the maritime employees involved in this action are California residents who work on vessels that operate exclusively off the California coast, application of the state's overtime law will not disrupt international or interstate commerce.

Aubry, 918 F.2d at 1425 (emphasis added).

A few years later, the Ninth Circuit balanced federal and state interests in deciding whether federal or state law should govern seamen's wages. In *Fuller v. Golden Age Fisheries*, 14 F.3d 1405 (9th Cir. 1994), the Ninth Circuit explained the limited applicability of *Aubry*, holding its rule applied to seamen primarily involved in matters of local concern, not to seaman engaged in interstate or international commerce:

> In *Aubry*, we held that § 213(b)(6) does not preempt California from applying the state's overtime pay laws to certain maritime employees. We balanced the state and federal interests involved, and said that "states may supplement federal admiralty law as applied to matters of local concern, so long as state law does not *actually conflict* with federal law or *interfere* with the *uniform working* of the maritime legal system."

Fuller, 14 F.3d at 1409 (citations omitted) (emphasis in original).

The Ninth Circuit crafted what it thought was a limited exception to the seamen exemption, but in fact its exception contradicts the express language in

the Act. The Act does not recognize any "exception" for seamen engaged in work of state interest in state waters or any other type of seaman from its coverage.

B. The FLSA Savings Clause does not abrogate the seamen's exemption, or Congress' mandate that uniform federal law should apply particularly in the context of maritime commerce.

(1). The California Supreme Court in *Tidewater Marine Western, Inc. v. Bradshaw* perpetuated the Ninth Circuit's improper abrogation of federal law exempting seamen from overtime.

The California Supreme Court in *Tidewater* relied heavily on *Aubry* to override the express exemption of seamen from overtime pay. The seamen in *Tidewater* were engaged in the same type of work as the seamen in *Aubry*. They worked on boats in the Santa Barbara Channel waiting to clean up oil spills and were not engaged in international and interstate commerce (as Karmin conceded he was).

To justify its departure from the seamen's exemption from overtime pay, the California Supreme Court misapplied and misconstrued the FLSA savings clause. Nothing in the language of the savings clause permits a state to completely eliminate or ignore the seamen's exemption under the FLSA. Rather, the language of the savings clause expressly limits the scope of state wage enactments to 1) increasing the minimum wage or 2) decreasing the maximum workweek. Nonetheless, the California Supreme Court broadly construed the savings clause, reasoning Congress had "left room" for supplementary state regulation of overtime pay for seamen

engaged in work of significant state interest such as the environmental protection of California's waters. *Tidewater*, 14 Cal. 4th at 567.

However, the language of the statute leaves no room for the Ninth Circuit or any state court to "legislate" an exception to the exemption. Nor does the statute's language provide an "opt-out" alternative for states wishing to apply their own wage law to certain types of workers.

(2) This Court rejected state encroachment into maritime matters via a savings clause because of the overriding need for uniformity in maritime commerce.

Four years after *Tidewater*, this Court in *Locke* considered whether a savings clause in a federal statute authorized the encroachment of state law in an area constitutionally and primarily subject to federal regulation. It unequivocally answered the question in the negative. In the process, this Court rejected the underpinnings of *Tidewater*, *i.e.* reliance on a savings clause in a federal statute as a basis for enacting and enforcing state laws directly contradicting the federal statute, especially in a maritime case. Although *Locke* did not specifically address the FLSA's savings clause, this Court explained the limited scope that must be given to such savings clauses in a maritime context.

Locke involved Washington state laws that purported to regulate oil tankers engaged in international commerce while in Washington waters. The

state laws pertained to navigation watch procedures, the crew's English language skills and training, as well as casualty reporting. An association of tanker operators sought to enjoin enforcement of the laws on the ground they encroached in an area long occupied by uniform federal maritime law.

The district court and the Ninth Circuit upheld enforcement of the Washington state laws even though they directly conflicted with federal statutes, relying on the "saving clauses" in the federal statutes. This Court reversed. It held the Ninth Circuit "placed more weight on the saving clauses than those provisions can bear, either from a textual standpoint or from a consideration of the whole federal regulatory scheme of which [the Oil Pollution Act of 1990] is but a part." *Locke*, 529 U.S. at 105.

This Court considered congressional intent in appending savings clauses to statutory schemes. It found it unlikely that:

> Congress would use a means so indirect as the saving clauses . . . to upset the settled division of authority by allowing States to impose additional unique substantive regulation on the at-sea conduct of vessels.

Id. at 106.

This Court "decline[d] to give broad effect to saving clauses where doing so would upset the careful regulatory scheme established by federal law." *Id.*

In *Aubry*, the Ninth Circuit deemed California's application of its overtime law to be a legitimate exercise of the state's police powers for seamen not engaged in interstate and international commerce. This Court in *Locke* rejected any "police power" justi-

fication for encroaching in an area of federal regulation such as maritime commerce. It recognized that Washington's laws would "bear upon national and international maritime commerce" and stated:

> [I]n this area [maritime commerce] there is no beginning assumption that concurrent regulation by the State is a valid exercise of its police powers.

Id. at 108.

Instead, this Court defined the inquiry as:

> whether the local laws in question are consistent with the federal statutory structure, which has as one of its objectives a uniformity of regulation for maritime commerce.

Id.

In *Tidewater*, the California Supreme Court relied on the FLSA's savings clause to extend California's overtime laws to seamen; and the Court of Appeal in the instant case considered itself to be bound by, and therefore followed *Tidewater* even though unlike the employees in *Tidewater*, Karmin admitted he was engaged in international and interstate commerce. (*See* Appendix A, page 2a.) This Court's ruling in *Locke* makes such reliance misplaced.

Unless federal law is applied to seamen who are engaged in international and interstate commerce, complete disruption of Congress's intended uniformity, harmony and regulation of maritime commerce results.

To accomplish the required uniformity in maritime commerce, Congress has extensively regulated the rights and obligations of seamen, including their remedies for personal injuries under the Jones Act,

(46 U.S.C. § 30104), their working hours under (46 U.S.C. § 8104) and their licensing and training under (46 U.S.C. § 7101 *et seq.* and the regulations promulgated thereunder.) The FLSA's exemption of seamen from overtime pay is consistent with Congress' intent to regulate maritime commerce. There is no room for state encroachment into the laws pertaining to seamen. The FLSA savings clause does not authorize the states to avoid a federal exemption.

(3) Post-*Locke*, the seaman's exemption from overtime has been correctly recognized as applied to seamen engaged in international and interstate commerce, in order to achieve the required uniformity of maritime law.

After *Locke*, a state's right to enact and enforce its overtime wage law as to seamen engaged in interstate commerce was considered by the district court in *Coil v. Jack Tanner Towing Co.*, 242 F. Supp. 2d 555 (S.D. Ill. 2002). The district court in *Coil* addressed the important role played by international and interstate commerce which was not considered or addressed by the California Supreme Court in *Tidewater* and then ignored by the Court of Appeal in *Karmin*.

The district court in *Coil* followed *Locke* and refused to broadly construe the savings clause in the FLSA to permit states to enact laws inconsistent with a federal statute. It first noted "state and federal courts have recognized through well-settled law that it is the intention of the Constitution and Congress for federal law to control *all* maritime law." *Coil*, 242 F. Supp. 2d at 558 (emphasis in original). It further held "states may not apply their respective laws if those laws would 'interfere with the proper harmony

and uniformity' of existing admiralty law." *Id.* at 559. Stated another way, the district court held:

> [S]tate law will yield to federal maritime law where a state remedy "works material prejudice to the characteristic features of the general maritime law or interferes with the proper harmony and uniformity of that law in its international and interstate relations."

Id.

Coil correctly recognizes federal law must prevail when in conflict with state law in matters of great federal interest such as interstate commerce. This Court in *Norfolk Southern Railway Co. v. Kirby*, 543 U.S. 14, 27 (2004), left no doubt about the supremacy of federal law in such matters, holding that "when state interests cannot be accommodated without defeating a federal interest . . . federal substantive law should govern."

CONCLUSION

The Ninth Circuit and the California courts have ignored the unequivocal mandate of federal law, namely the FLSA, in upholding payment of overtime wages to seamen. Despite express language exempting seamen from overtime wages in that federal statute, the Ninth Circuit and the California courts have judicially created an exception to the exemption and imposed overtime wage obligations under California law on the seamen's employer. California overtime wage law is repugnant to and directly conflicts with federal wage law applicable to seamen. After *Locke*, there is no basis for the Ninth Circuit and California state courts to rely on the saving clause in the FLSA to justify the application of California wage law. California wage law cannot be

accommodated without total derogation of federal law applicable to seamen and, more particularly, to seamen engaged in international and interstate commerce. This Court should grant review to resolve that conflict.

State laws affecting seamen primarily engaged in international and interstate commerce must yield to federal law. The Ninth Circuit and the California courts have ignored that principle in this case to the detriment of uniformity in the laws affecting maritime commerce.

Respectfully submitted,

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March 1, 2010

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APPENDIX A

SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF ALAMEDA

[Filed: OCT. 01, 2008]

Case No.: RG08381402

JERROLD KARMIN,

Plaintiff,

v.

MARINE EXPRESS, INC.,

Defendant.

JUDGMENT

This action was tried to the Court on June 12, 2008 on Plaintiff Jerrold Karmin's claim that he is due overtime pay under state law from his former employer, Defendant Marine Express, Inc. Plaintiff Jerrold Karmin was represented by Gary Goyette of Goyette and Associates. Defendant Marine Express, Inc. was represented by Marilyn Raia and J. Douglas Durham of Bullivant Houser Bailey.

I. FINDINGS OF FACT

Based on the evidence presented at trial the Court makes the following findings of fact:

1. Plaintiff Jerrold Karmin was at all relevant times a federally licensed seaman;

2. Plaintiff captained Defendant Marine Express, Inc.'s vessels engaged (a) in transporting to merchant

vessels, passengers, crew, light cargo, and consumables to be used at sea before arriving in another port, and (b) transporting from merchant vessels passengers, crews, and waste materials for disposal ashore;

3. Vessels serviced by Plaintiff Karmin were foreign flag vessels engaged in international commerce or domestic vessels engaged in interstate commerce;

4. Plaintiff Karmin's job was essential to and part of international and interstate commerce;

5. Plaintiff Karmin was employed "in commerce" within the scope of, and subject to, the provisions of the Federal Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*

II. CONCLUSIONS OF LAW

1. The Fair Labor Standards Act provides for overtime pay under 29 U.S.C. § 207, and exempts "seamen" from its overtime provisions in 29 U.S.C. § 213(b)(6);

2. The holdings in *Pacific Merchant Shipping Assn. V. Aubry*, 918 F.2d 1409 (9th Cir. 1990) and *Tidewater Marine v. Bradshaw* (1996), 13 Cal.4th 557 do not control Plaintiff Karmin's claims because the plaintiffs in those actions, unlike Plaintiff Karmin, were not engaged "in commerce;"

3. Plaintiff Karmin is subject to the Fair Labor Standards Act and, as a "seaman" he is exempt under 29 U.S.C. § 213(b)(6) from the overtime provisions of 29 U.S.C. § 207, *et seq.*;

4. The Fair Labor Standards Act's Savings Clause does not authorize states to eliminate the "seamen"

exemption in 29 U.S.C. § 213(b)(6) by operation of state overtime laws;

5. The exemption of "seaman" from the overtime provisions of the Fair Labor Standards Act preempts any overtime rights based on state law from applying to such seamen, including Plaintiff Karmin.

III. JUDGMENT

Consistent with the Findings of Fact and Conclusions of Law stated above and the Statement of Decision filed in this matter, Judgment is hereby rendered for Defendant Marine Express, Inc. and against Plaintiff Jerrold Karmin.

Neither party is entitled to an award of costs, interest or attorneys' fees.

DATED: Oct. 01, 2008

/s/ STEPHEN DOMBRINK,
JUDGE OF THE SUPERIOR COURT

APPENDIX B

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FIRST APPELLATE DISTRICT DIVISION FIVE

[Filed: AUG. 27. 2009]

A123701
(Alameda County Super. Ct. No. RG08381402)

JERROLD KARMIN,
Plaintiff and Appellant,

v.

MARINE EXPRESS, INC.,
Defendant and Respondent.

Following a trial de novo conducted under Labor Code section 98.2, the superior court rejected appellant Jerrold Karmin's claim that he was entitled to overtime wages under state law for work performed while captaining vessels exclusively within California coastal waters. We agree with Karmin that the trial court erred in concluding his claim was preempted by the "seaman's exemption" of the Fair Labor Standards Act (FLSA; 29 U.S.C.§§ 207, 213(b)(6)). We reject the argument by Karmin's employer, respondent Marine Express, Inc. (Marine Express), that we lack the jurisdiction to entertain this appeal as one having been taken from a "limited" civil case involving an amount in controversy of $25,000 or less. (Code Civ. Proc., §§ 85, 86, 904.1, 904.2.)

I. BACKGROUND

Marine Express is a California corporation that, among other things, services oceangoing vessels by delivering supplies and crew members to those ships while they are anchored. Its customer ships sail under both domestic and international flags and many are engaged in interstate or international commerce, with crews from all over the world.

Karmin, a resident of California, is a ship captain licensed by the United States Coast Guard who worked for Marine Express between 2002 and 2006. He operated tug boats and launch boats that delivered supplies and crew to anchored ships. Between 2004 and 2006, ninety-nine percent of Karmin's work for Marine Express was conducted in the San Francisco Bay inside the Golden Gate Bridge. In addition to transporting supplies and crew, he sometimes transported federal customs agents to and from anchored ships so they could conduct inspections of those ships. Karmin also operated Marine Express vessels in the Sacramento River Delta and on trips to Monterey and San Diego, but even on those trips he remained within California territorial waters; i.e., within three miles of the California coast.[1] He never operated a

---

[1] Under state law, California's territorial boundaries extend three nautical miles beyond the outermost islands, reefs and rocks, and include all waters between those islands and the coast. (Cal. Const., art III, § 2; Gov. Code, §§ 170, 171; *People v. Weeren* (1980) 26 Cal.3d 654, 661.) Under federal law, California's territorial boundaries are defined more narrowly, extending three geographic miles from the coast, and including a three-mile-wide band around any islands lying off the coast, but excluding the waters between the islands and the coast. (43 U.S.C. §§ 1301(b), 1312.)

vessel on the high seas during his employment with Marine Express.

Karmin was not paid overtime while working for Marine Express. After his termination in 2006, he filed a complaint with the California State Labor Commissioner (Commissioner) under Labor Code section 98 seeking unpaid overtime compensation. The Commissioner awarded Karmin $11,355.05 in unpaid overtime wages, $1,813.69 for interest on those wages, and $8,400.00 for penalties pursuant to Labor Code section 203, for a total award of $21,568.74.

Marine Express filed a timely appeal from the award in superior court under Labor Code section 98.2. Following the trial de novo authorized by that section, the superior court entered judgment in favor of Marine Express. The court concluded that under the seaman's exemption to the FLSA, Karmin was not entitled to the overtime compensation that would otherwise be required under California law.

Karmin appeals the superior court judgment.

II. DISCUSSION

A. *The Appeal is Timely and is Properly Before this Court*

The superior court entered its written judgment on October 1, 2008, and the court clerk mailed the parties a file-stamped copy of that judgment on the same date. Karmin filed a notice of appeal on November 26, 2008, 56 days later. In its respondent's brief, Marine Express argues that this appeal must be dismissed as untimely because the case below was a limited civil case under Code of Civil Procedure sections 85 and 86 and an appeal therefrom was timely only if the notice of appeal was filed within 30 days after the clerk

mailed the parties a file-stamped copy of the judgment. (See Cal. Rules of Court, rule 8.822(a)(1).)[2] Karmin counters that the case below was an *un*limited civil case, and that the notice of appeal was timely so long as it was filed within 60 days of mailing. (See rule 8.104(a)(1).) We conclude the appeal was timely because the case below was never classified as a limited case and the superior court treated it as an unlimited case. We therefore have jurisdiction to hear this appeal. (Code Civ. Proc., § 904.1, subd. (a)(1).)

In 1998, the California Constitution was amended to permit unification of the municipal and superior courts in each county into a single superior court system. (Cal. Const., art. VI, § 5.)[3] Civil cases formerly within the jurisdiction of the municipal courts are now classified as limited civil cases, while matters formerly within the jurisdiction of the superior courts are classified as unlimited civil cases. (Code Civ. Proc., §§ 85, 88; *Ytuarte v. Superior Court* (2005) 129 Cal.App.4th 266, 274 (*Ytuarte*).)

The classification of a case as limited triggers a number of procedural provisions generally designed to make the litigation of such cases more streamlined and economical. (See Code Civ. Proc., §§ 91-99.) Appeals in limited civil cases are heard by the appellate division of the superior court rather than the court of appeal and they are subject to shorter filing deadlines. (Cal. Const., art. VI, §§ 4 and 11, subd. (b); Code Civ. Proc., §§ 77, subd. (e), 904.2;

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[2] Further references to rules are to the California Rules of Court.

[3] Former article VI, section 5 was amended by Proposition 220, § 4, effective June 3, 1998, and repealed by initiative, Gen. Elec. (Nov. 6, 2002) Proposition 48.

rules 8.104(a)(1), 8.822(a).) A notice of appeal in a limited case must be filed on or before the earliest of three dates: (1) 30 days after the clerk mails notice of entry of the judgment or a file-stamped copy of the judgment to the party appealing; (2) 30 days after the appealing party serves or is served with a notice of entry of judgment or file-stamped copy of the judgment; or (3) 90 days after entry of judgment. (Rule 8.822(a).) In an unlimited case, these periods are 60 days, 60 days and 180 days, respectively. (Rule 8.104(a).)

Subject to certain other requirements concerning the nature of the relief sought, a limited civil case is one in which the amount in controversy is $25,000 or less. (Code Civ. Proc., § 85, subd. (a); see also § 86.) "As used in this section, 'amount in controversy' means the amount of the demand, or the recovery sought, or the value of the property, or the amount of the lien, that is in controversy in the action, exclusive of attorneys' fees, interest, and costs." (Code Civ. Proc., § 85, subd. (a).) Marine Express submits that this case was necessarily limited because Karmin testified at the trial de novo that he was seeking overtime and statutory penalties that did not exceed $25,000. We disagree.

A case is a limited case when it is specifically classified as such. Code of Civil Procedure section 422.30, subdivision (b) provides, "In a limited civil case, the caption shall state that the case is a limited civil case, and the clerk shall classify the case accordingly." Rule 2.111(10) similarly requires that, "In the caption of every pleading and every other paper filed in a limited civil case, the words 'Limited Civil Case'" shall appear on the first page. By contrast, there is no similar statutory requirement that an

unlimited case be so designated, and when a party fails to specify the nature of the case in the initial pleading, the superior court and the other parties may assume it is unlimited in nature.[4]

"Whether an action qualifies as a limited or unlimited civil action is determined initially from the prayer or demand for relief in the plaintiffs complaint. Once classified as limited or unlimited that classification normally continues throughout the litigation. If, however, a matter has been designated as an unlimited action, and yet the amount of controversy is $25,000 or less, the statutory scheme authorizes 'reclassification' of the case as a 'limited' action and transfer of the matter to a superior court presiding over such actions. [Citation.]" (*Ytuarte*, *supra*, 129 Cal.App.4th at p. 274.)

The Legislature has specifically provided that when a case has been misclassified as unlimited due to a failure to properly label the pleadings, it may be reclassified upon the timely motion of any party or by the court on its own motion. (Code Civ. Proc., § 403.040, subd. (a).) A court contemplating reclassification must provide notice to the parties and an opportunity to be heard and to argue why reclassification should or should not be ordered. (*Stern v. Superior Court* (2003) 105 Cal.App.4th 223, 227; see also *Kent v. Superior Court* (1992) 2 Cal.App.4th

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[4] Although Marine Express appealed from a Labor Commission award that did not exceed $25,000, this does not necessarily establish the amount in controversy. Such an appeal results in a trial de novo, one in which the superior court is neither bound by, nor required to give any deference to, the administrative decision and is permitted to consider evidence that was not presented at the administrative hearing. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1116.)

1392, 1394.) Reclassification is appropriate only when "(i) the absence of jurisdiction is apparent before trial from the complaint, petition, or related documents, or (ii) during the course of pretrial litigation, it becomes clear that the matter will 'necessarily' result in a verdict below the superior court's jurisdictional amount. . . ." (*Ytuarte*, *supra*, 129 Cal.App.4th at p. 276.) An untimely motion for reclassification requires the moving party to show good cause for not seeking reclassification at an earlier date. (Code Civ. Proc., § 403.040, subd. (b).)

Though Marine Express could have designated its appeal from the Labor Commissioner's award as a limited civil case based on the amount in controversy, it did not do so. Its initial pleading was a notice of appeal from the Labor Commissioner's award that nowhere contained the words, "Limited Case." It later filed an answer (apparently to the claim notice that Karmin filed with the Labor Commission, which was not included in the superior court file), but this document similarly did not designate the case as limited. The Domain Case Summary generated by the superior court describes the case as "Jurisdiction Unlimited," showing that the court itself had classified the case as unlimited. No motion to reclassify the case as limited was ever filed by. Marine Express and the superior court did not purport to reclassify the case on its own motion.

Were we to deem the action a limited civil case at this late juncture, we would be depriving Karmin of the notice to which he would have been entitled had the case been formally reclassified in superior court. This would effectively—and retrospectively—render a timely appeal untimely. "'The right of appeal is remedial and in doubtful cases the doubt should be

resolved in favor of the right whenever the substantial interests of a party are affected by a judgment. . . '" (*In re Matthew C.* (1993) 6 Cal.4th 386, 394.) Because this case was never classified as a limited one in the superior court, it is an unlimited case for purposes of appeal. The notice of appeal was therefore timely and jurisdiction properly lies with this court rather than the appellate department of the superior court.

In light of our conclusion, we do not consider the effect of post-judgment e-mail correspondence between the superior court and the office of Karmin's counsel regarding the classification of the case, a copy of which was attached as an exhibit to Karmin's reply brief. We deny as moot the motion by Marine Express, filed May 7, 2009, to strike this exhibit and an accompanying declaration and to deny judicial notice or augmentation of the same.

B. *The "Seaman's Exemption" Does Not Preclude Plaintiff's Overtime Claim*

Turning to the merits, Karmin argues that the superior court erred when it concluded the seaman's exemption to the FLSA barred his claim to overtime compensation under state law. Because this case arises from facts that cannot be meaningfully distinguished from those considered by our Supreme Court in *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557 (Tidewater), we agree.[5]

The FLSA is a federal law requiring employers engaged in "commerce" to accord certain benefits and protections to their employees, including the payment of overtime wages. (29 U.S.C. § 207.) It specifies

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[5] Where, as here, the relevant facts are undisputed, the issue is one of law that we review de novo. (*Miller v. Collectors Universe, Inc.* (2008) 159 Cal.App.4th 988, 999.)

certain employees who are exempt from overtime pay, including "any employee employed as a seaman." (29 U.S.C.§ 213(b)(6).) California state law, on the other hand, does not exempt seamen from its laws concerning overtime compensation.

States possess broad authority under their police powers to regulate the employment relationship and protect resident workers. (*Pacific Merchant Shipping Ass'n v. Aubrey* (9th Cir.1990) 918 F.2d 1409, 1415 (Aubrey).) While federal law is supreme in the areas of admiralty and interstate commerce, it will not automatically preempt state regulation and, indeed, there is a presumption against preemption when the local law at issue is designed to protect the welfare of the state's residents. (See *Tidewater, supra*, 14 Cal.4th at p. 567; *People v. Union Pacific Railroad Co.* (2006) 141 Cal.App.4th 1228, 1247 (Union Pacific).) Preemption generally will be found only in three situations: (1) where the federal law expressly so states; (2) where the federal law is so comprehensive it leaves no room for state regulation; or (3) where federal and state laws actually are in conflict. (*Tidewater*, at p. 567.)

In *Tidewater*, the court considered a claim for state overtime compensation brought by seamen who were California residents and who transported workers and supplies to boats and platforms performing environmental cleanup in the Santa Barbara Channel, an area that was within California's boundaries under state law but partially outside the boundaries as defined by federal law. (See footnote 1, *infra*, and *Tidewater*, *supra*, 14 Cal.4th at pp. 561, 564.) After concluding that California had the power to regulate employment outside its federal law boundaries (a subject not at issue here, as Karmin worked exclusively

within California territorial waters as defined by both federal and state law), the court addressed the effect of the seaman's exemption in FSLA and concluded it did not bar the employees' right to overtime under state law.

"Here, not only does the FLSA leave 'room' for supplementary state regulation of overtime, the FLSA expressly indicates that it does *not* preempt this regulation. The FLSA includes a 'savings clause,' which provides, 'No provision of this chapter or of any order thereunder shall excuse noncompliance with any . . . State law or municipal ordinance establishing . . . a maximum workweek lower than the maximum workweek established under this chapter . . . .' (29 U.S.C. § 218(a).) The federal courts that have addressed this question have interpreted this savings clause as expressly permitting states to regulate overtime wages. [Citations.] [¶] Moreover, no provision of the FLSA 'actually conflicts' with California law. The FLSA does not expressly preclude states from regulating the overtime wages of seamen, and the legislative history indicates that Congress added the exemption for seamen at the request of labor unions representing seamen. The unions were concerned that regulating the employment of seamen under FLSA would conflict with other federal laws protecting seamen. (29 C.F.R § 783.29 (1996) [describing legislative history of the FLSA's seaman exemption].) Thus, the seamen exemption appears to have had no purpose other than to negate the regulatory effect the FLSA would otherwise have had on the employment of seamen, not to create an affirmative bar against state regulation of that employment." (*Tidewater*, *supra*, 14 Cal.4th at pp. 567-568.)

The result in *Tidewater* is consistent with the decision of the Ninth Circuit Court of Appeals in *Aubrey*, which arose from the same set of facts regarding seamen working in the Santa Barbara Channel. (*Aubrey, supra*, 918 F.2d at pp. 1412-1414; see *Tidewater, supra*, 14 Cal.4th at p. 563.) "[I]n light of the plain language of the FLSA's savings clause and in the absence of a clear indication from Congress to the contrary, § 213(b)(6) [the seaman's exemption] does not preclude enforcement of California's overtime provisions to protect the California-resident seamen in this case." (*Aubrey* at p. 1419.)

Marine Express argues that we should reject the holding of *Tidewater* because it is inconsistent with *United States v. Locke* (2000) 529 U.S. 89 (*Locke*), in which the United States Supreme Court determined that savings clauses in the Oil Pollution Act (33 U.S.C. § 2710 et seq.) did not permit Washington State to regulate the design and operation of oil tankers and the qualifications of tanker crews within its territorial waters. (*Locke*, at pp. 95-97, 104-106.) The savings clauses at issue there provided that nothing in the federal Act would prevent a state from "imposing any additional liability or requirements" with respect to the discharge of oil or other pollution, or the substantial threat of discharge of oil. (*Locke*, at pp. 104-105, citing 33 U.S.C. § 2718(a)(1)(A) & (c)(1).) Noting that these provisions were placed in a section of the Act that created a liability scheme for pollution but did not regulate vessel operation, design, or manning, the court concluded, "The evident purpose of the savings clauses is to preserve state laws which, rather than imposing substantive regulation of a vessel's primary conduct, establish liability rules and financial requirements relating to oil spills." (*Locke*, at p. 105.)

The *Locke* decision's narrow interpretation of a savings clause concerning liability under the Oil Pollution Act does not in any way conflict with our own Supreme Court's construction of the FLSA savings clause in the *Tidewater* case. Marine Express has cited no other decision by the United States Supreme Court that is contrary to *Tidewater*, and in the absence of controlling United States Supreme Court authority, this court is bound by a decision of the California Supreme Court interpreting federal law. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455; *People v. Superior Court (Williams)* (1992) 8 Cal.App.4th 688, 702-703.)

In any event, the court in *Tidewater* did not rely exclusively on the FLSA savings clause to determine the seaman's exemption did not apply. (*Tidewater*, *supra*, 14 Cal.4th at pp. 567-568.) Rather, it applied the customary three-prong preemption analysis to conclude that FLSA did not bar the payment of state overtime compensation to seamen working within California, concluding that the FLSA (1) did not expressly preempt state overtime laws; (2) left room for state regulation of overtime compensation; and (3) did not actually conflict with state law. (*Tidewater*, at p. 567.)

Nor are we persuaded by the trial court's conclusion that *Tidewater* is distinguishable on its facts because the employees in that case transported goods and personnel that would be used for environmental cleanup in the Santa Barbara Channel, rather than goods and personnel destined for vessels that were engaged in interstate and international commerce. The court in *Tidewater* assumed that the employers in that case were engaged in "commerce" within the meaning of the FLSA. (*Tidewater*, *supra*, 14 Cal.4th

at p. 566.) Moreover, Karmin's involvement in interstate commerce did not mean that only Congress could regulate the terms of his employment. "'[T]he Constitution when "conferring upon Congress the regulation of commerce, . . . never intended to cut the States off from legislating on all subjects relating to the health, life, and safety of their citizens, though the legislation might indirectly affect the commerce of the country."'" (*Union Pacific, supra*, 141 Cal. App.4th at p. 1248, quoting *Huron Portland Cement Co. v. Detroit* (1960) 362 U.S. 440, 443-444.)

Marine Express argues that Karmin's claim for overtime is precluded by the federal decisions in *Fuller v. Golden Age Fisheries* (9th Cir. 1994) 14 F.3d 1405 (*Fuller*) and *Coil v. Jack Tanner Towing Co.* (S.D. Ill. 2002) 242 F.Supp.2d 555, 558 (*Coil*), both of which rejected state overtime claims on the basis of the FLSA seaman's exemption. We are bound to follow *Tidewater*, but also find these cases distinguishable from the one before us.

In *Fuller*, workers on a trawler that fished on the high seas near Alaska but whose home port was in Seattle, Washington sought overtime benefits under Alaskan state law. (*Fuller, supra*, 14 F.3d at pp. 1406-1407.) The Ninth Circuit rejected their claim based on the seaman's exemption to the FLSA, noting that they were not Alaska residents, that they worked primarily on the high seas, and that Alaska did not generally exercise jurisdiction over trawler personnel whose work within state boundaries was only incidental to their employment. (*Id.* at p. 1409.) The court distinguished its earlier decision in Aubrey allowing state overtime to be paid to seamen working in the Santa Barbara Channel, noting that those workers had been state residents working exclusively

within the state, which had a strong interest in protecting workers who prevented the pollution of its coastal environment. (*Ibid.*; see *Aubrey*, *supra*, 918 F.2d at pp. 1426-1427.) Like the workers in *Aubrey*, and unlike the workers in *Fuller*, Karmin was a California resident performing work in California waters.

In *Coil*, overtime compensation under Illinois law was sought by workers on boats that traveled on the Mississippi River in the waters of both Illinois and Missouri. (*Coil*, *supra*, 242 F.Supp.3d at p. 557.) Citing the rule that states may not apply their laws when they would "'interfere with the proper harmony and uniformity' of existing admiralty law" (*id.* at p. 559), the court concluded that the application of any state's different overtime provision in this context would "destroy the uniformity of rules applicable to commerce on the inland waterways. It would cause carriers of goods in the inland waterways to be able to maintain daily rates of pay for seaman while outside Illinois waters but to be unable to do so while in Illinois waters. It would force carriers to track hour by hour when their vessels are in Illinois waters, and in some cases, when their vessels are on the Illinois side of [the] river and when the vessels are on another state's side of the river, to determine which wage law applies." (*Id.* at pp. 559-560.) These concerns do not apply to the case before us.

Karmin was a seaman who resided in California, worked exclusively within the state territorial waters and was entitled to overtime compensation as required by California law. Although Karmin transported goods and crew that were bound for interstate or international commerce, allowing overtime in this situation does not amount to a direct regulation of interstate commerce within the meaning of the

federal Constitution. None of the traditional indicia of federal preemption have been established with respect to the seaman's exemption under the FLSA. The superior court erred in entering judgment for Marine Express.[6]

III. DISPOSITION

The judgment is reversed and the superior court is ordered to reinstate the Labor Commissioner's award in favor of appellant ($11,355.05 in overtime wages, $1,813.69 in interest on those wages, and $8,400.00 in penalties). Appellant is also entitled to costs and reasonable attorney fees on appeal. (Lab. Code, § 98.2, subd. (c).) We remand the case to the trial court for a determination of attorney fees and costs and any additional interest to which appellant may be entitled.

NEEDHAM, J.

We concur.

SIMONS, Acting P. J.

BRUINIERS, J.

[6] Karmin attached as an exhibit to his reply brief a statement of decision by the superior court in a different matter discussing the applicability of the FLSA seaman's exemption. We grant Marine Express's May 7, 2009 motion to strike this document from the brief and do not consider it in our decision.

APPENDIX C

IN THE SUPREME COURT OF CALIFORNIA

En Banc

[Filed DEC 2, 2009]

S176907

Court of Appeal, First Appellate District,
Division Five—No. A123701

JERROLD KARMIN,
Plaintiff and Appellant,

v.

MARINE EXPRESS, INC.,
Defendant and Respondent.

The petition for review is denied.

GEORGE
Chief Justice